

**Commonwealth Edison Company**

**Proposed general increase in electric rates**

:  
:  
: **ICC Docket No. 10-0467**  
:  
:

# **BRIEF ON EXCEPTIONS**

**OF THE COALITION TO**

**REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

## **REACT**

**COMPRISED OF:**

**A. FINKL & SONS, Co.**

**AUX SABLE LIQUID PRODUCTS, LP**

**THE CITY OF CHICAGO**

**COMMERCE ENERGY, INC.**

**FLINT HILLS RESOURCES, LP**

**FUTUREMARK PAPER COMPANY**

**INTEGRYS ENERGY SERVICES, INC.**

**INTERSTATE GAS SUPPLY OF ILLINOIS, INC.**

**THE METROPOLITAN WATER RECLAMATION DISTRICT**

**OF GREATER CHICAGO**

**PDV MIDWEST REFINING LLC**

**UNITED AIRLINES, INC.**

**WELLS MANUFACTURING, INC.**

## TABLE OF CONTENTS

I.	Introduction	1
VI.	Cost of Service and Allocation Issues	5
C.	Contested Issues	5
1.	Embedded Cost of Service Study Issues	5
b.	Primary/Secondary Split	5
(i)	The Appropriate Methodology/Non-Compliance with What the Commission Required in its Final Order in Docket 08-0532	5
(ii)	Functional Identification of Costs	5
c.	Investigation of Assets Used To Serve Extra Large Load Customer Class	6
k.	Customer Care Cost Allocation	10
(i)	Allocation Study vs. Switching Study	17
(iii)	Adjustment of Allocation Study Allocators	18
VII.	Rate Design	19
C.	Potentially Contested Issues	19
2.	Non-Residential	19
(a)	Movement Toward ECOSS Rates	19
(i)	Extra Large Load and High Voltage Customer Classes	19
3.	Collection of Illinois Electricity Distribution Tax	20
4.	Distribution Loss Factors	20
IX.	Other Issues	21
F.	Other	21
XI.	Conclusion	22

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**Commonwealth Edison Company** :  
: **Docket No. 10-0467**  
**Proposed General Increase in Electric** :  
**Rates** :

**BRIEF ON EXCEPTIONS OF THE COALITION  
TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

The Coalition to Request Equitable Allocation of Costs Together (“REACT”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.830), respectfully submits its Brief on Exceptions in the instant proceeding addressing the Administrative Law Judges’ Proposed Order (the “Proposed Order”) regarding the proposed general increase in electric rates of Commonwealth Edison Company (“ComEd”).<sup>1</sup> A copy of the Proposed Order containing suggested replacement language is attached hereto and made a part hereof as Appendix A.

**I.**

**INTRODUCTION**

REACT applauds the Proposed Order’s strong language underscoring the need to maintain the integrity of the Commission’s Orders. The Proposed Order properly criticizes ComEd for its repeated failure to comply with prior Commission Orders regarding cost allocation, and recommends that the Commission take several initial steps to address those failures. The Proposed Order candidly and accurately portrays the situation: ComEd has

---

<sup>1</sup> This Brief on Exceptions follows the outline used in the Proposed Order. The positions stated herein do not necessarily represent the positions of any individual REACT member.

repeatedly acted in a manner that falls far short of the requirements set forth in Commission Orders, and in some instances ComEd appears to have simply disregarded the Commission's clear directives entirely. The Proposed Order's candor in recognizing this situation is an important step toward ensuring that ComEd -- and each entity regulated by the Commission -- complies with the Public Utilities Act ("Act"). Yet, having found repeated instances of non-compliance with Commission Orders, the Proposed Order stops short of fully imposing appropriate remedies for ComEd's knowing non-compliance.

The Proposed Order correctly recognizes the absolute requirement that ComEd follow the Commission's Final Orders. (*See, e.g.*, Proposed Order at 75, 157, 166-167.) As the Proposed Order succinctly described in one particular instance:

Finally, when the Commission issues an Order, it is not for [anyone] at ComEd, to determine the necessity of what is mandated in that order. If ComEd has questions about the meaning of that order, it can file a petition for rehearing regarding that language, or, it can file a motion seeking clarification. It can also file an appeal to the appellate court, if it objects to any language in a Commission Order. None of these legal remedies were pursued. Without use of the legal remedies that are available to ComEd, it is required to comply with Commission Orders.

(Proposed Order at 167.)

ComEd's failure to abide by the terms of prior Commission Orders regarding cost allocation has resulted in ComEd again seeking from its largest customers unjustified, massive **million dollar-plus annual rate increases** for individual customers **that would violate the Act's cost causation principles**. The Act's requirement that costs be assigned to the class of customers that caused those costs has consistently formed the basis for Commission Orders in ComEd's recent cases, and is again set forth in the Proposed Order as the controlling legal standard. (*See, e.g.*, Proposed Order at 10 ("Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its

charges to its delivery service customers that use the facilities and services associated with such costs”, citing 220 ILCS 5/16-108(c)).)

The Proposed Order contains an accurate assessment of ComEd’s non-compliance and clear language about the potential consequences of future non-compliance. REACT respectfully reiterates that it believes that the instant proceeding should be dismissed without prejudice -- for the reasons set forth in REACT’s prior pleadings, as well as for the reasons set forth in the Proposed Order. ComEd should not be allowed to advance this rate increase request because it failed to comply with the Commission’s clear directives.

Should the Commission decline to dismiss this proceeding, ComEd also should be put on notice that failure to abide by the terms of the Commission’s Orders will result in dismissal of any future rate increase requests and substantial penalties. At a minimum, the Commission’s Final Order in the instant proceeding should set out clear disciplinary consequences for ComEd should it again fail to comply with Commission’s requirements. Clear penalties for future non-compliance will protect all customers and will uphold the integrity of the Commission and its regulatory function.

In addition, although the Proposed Order takes some steps toward forcing ComEd to comply with the Act’s cost causation mandate and previous Commission Orders, the Proposed Order nonetheless stops short of taking relatively minor extra steps toward accurate cost allocation. REACT respectfully submits that these small steps will significantly advance the goals stated within the Proposed Order:

- **Rates to all over-10 MW customer classes should reflect system components actually used by those classes.** ComEd should be required to allocate the cost of the distribution system assets serving all of ComEd’s over-10 MW customer classes in proportion to each class’s actual use of those distribution system assets. The Proposed Order recognizes this principal and takes the important step of directing ComEd to undertake a study of the distribution assets used to serve the Extra Large Load class. (See Proposed Order at 182.)

To accurately allocate the costs of those assets, it is necessary to include the High Voltage over-10 MW customer class in that study.

- **ComEd should not be allowed to increase rates for the over-10 MW customer classes beyond the system average increase.** Since ComEd has failed to provide an appropriate analysis of the assets used to serve the over-10 MW customer classes, their increase should be limited to, at most, a system average increase. This will further the Proposed Order’s twin goals of “mov[ing], gradually, toward cost-based rates” (Proposed Order at 249) and not overcharging ComEd’s largest customers for assets that the respective customer classes use in, at most, *de minimis* proportions. (Proposed Order at 177-78, 181-182.) Under the rate structure endorsed by the Proposed Order, the over-10 MW High Voltage customers properly face an increase below system average, and thus would require no adjustment, but the Extra Large Load customer class will require additional steps to avoid moving further toward a cost of service study that does not accurately take into account all necessary cost causation principles.
- **ComEd should be required to allocate all of its Customer Care Costs based on an embedded cost of service study, adjusted to reflect how those costs are caused.** At present, some Customer Care Costs that should be allocated to the supply function are recovered through delivery services rates. That contradicts the Act’s requirement for cost-based delivery rates, the Act’s definition of “delivery,” and the Act’s mandate that the Commission encourage electric market competition. The best solution to this misallocation would be adoption of the Allocation Study, which is based on current, verifiable information, using embedded cost principles. This would support the Proposed Order’s goal of assigning costs to the proper causers. ComEd will continue to recover all of its costs, and based on the current facts there will be no disproportionate or unfair impact to any customers under the Allocation Study approach.
- **ComEd should be required to retain the existing rate design to collect taxes.** Maintaining the *status quo* for IEDT allocation would conform with the goal of rate design driven by cost causation. (Proposed Order at 270.)
- **ComEd should be required to annually update its distribution loss factor.** Accurate rate setting and cost allocation requires oversight and fine-tuning of Distribution Loss Factors (“DLFs”) through yearly filings, which would include the possibility of adversary proceedings. (See Proposed Order at 276.)

These relatively minor changes will enable more accurate cost allocation without unfairly impacting a single customer, and should be 100% revenue neutral for ComEd.

For the sake of clarity, REACT also proposes non-substantive changes to correct potential errors in the Proposed Order. Those changes, along with substantive changes responsive to the issues raised in this Brief on Exceptions, are contained in Attachment A.

## VI.

### COST OF SERVICE AND ALLOCATION ISSUES

#### C. Contested Issues

##### 1. Embedded Cost of Service Study Issues

##### b. Primary/Secondary Split

##### (i) The Appropriate Methodology/Non-Compliance With What The Commission Required In Its Final Order In Docket 08-0532

##### (ii) Functional Identification Of Costs

The Proposed Order appropriately concludes that “ComEd, generally, has not complied with the Commission’s Order in the *Rate Design Investigation* Order in docket 08-0532.” (Proposed Order at 163.) One of the *Rate Design Investigation* Order’s specific directives was that ComEd perform “an analysis of which customer groups are served by which system components.” (ICC Docket No. 08-0532, Final Order dated April 21, 2010 at 40.) Of course, the Act mandates that:

**Charges for delivery services shall be cost based**, and shall allow the electric utility to recover the costs of providing delivery services through its **charges to its delivery service customers that use the facilities and services associated with such costs**

(220 ILCS 5/16-108(c) (emphasis added).) Notwithstanding the clear directive in the *Rate Design Investigation* Order and the statutory requirement in the Act, ComEd failed to provide an analysis of the actual distribution system assets serving the over-10 MW customers, even though REACT presented substantial evidence explaining that ComEd’s primary/secondary study confirms that ComEd is fully capable of conducting such a study. (See REACT Initial Brief at 38-41; REACT Reply Brief at 14.)

As a “remedy” for ComEd’s failure to abide by the clear requirement in the *Rate Design Investigation* Order that ComEd present the analysis of which customer groups are served by

which system components, the Proposed Order directs ComEd to provide such an analysis for the Extra Large Load customer class in the initial filing of its next rate case. (Proposed Order at 163; *see also id.* at 181-182 (further describing analysis).) The Proposed Order credits the persuasive evidence presented by REACT expert witness Harry Terhune that demonstrates the disconnect between the facilities actually used by ComEd's classes comprised of large customers and the allocation factors that ComEd uses to develop rates for those customer classes. (*See, e.g.,* Proposed Order at 178-82.) Significantly, nothing in the Commission's Order in the *Rate Design Investigation* Order, the Act, or the evidentiary record suggests that the over-10 MW High Voltage customer class should be treated differently than Extra Large Load customer class regarding the level of detailed analysis that should be performed to align costs and rates.

REACT respectfully requests that the Proposed Order be modified to require ComEd to study of the actual use of distribution assets used to provide service to all over-10 MW customers -- including the over-10 MW High Voltage class customers.

**c. Investigation of Assets Used  
To Serve Extra Large Load Customer Class**

The Proposed Order properly underscores the importance of aligning rates with the actual costs caused by an individual class, and, to achieve that goal, directs ComEd to examine the actual assets that are used to provide service to the Extra Large Load customer. (*See* Proposed Order at 181-82.) The Proposed Order credited the legitimate concerns, established by substantial evidence in the record, that there is improper billing associated with certain assets that the Extra Large Load customers either do not use, or pay for separately under Rider NS. (*See id.*) REACT applauds the Proposed Order's recognition that once ComEd undertakes such a study of actual assets serving the Extra Large Load customer class, ComEd's allocations will be much closer to the class's actual costs. However, the Proposed Order suggests that perhaps

the over-10 MW High Voltage class customers should be excluded from this study by restricting the study to the Extra Large Load customer class. Such a limitation would be contrary to the record evidence, the requirements in the Act, the Commission's prior directive in the *Rate Design Investigation* Order, and the Proposed Order's stated goal of bringing "uniformity regarding the equipment provided and billing for these [Rider NS] services." (Proposed Order at 182.)

For purposes of the study concept that the Proposed Order endorses, there is no material distinction between the non-High Voltage and High Voltage customer classes for over-10 MW service. As Mr. Terhune pointed out, a properly designed study would:

would provide **a much more transparent basis for a potentially reasonable set of allocation factors** that would exclude inappropriate costs from the rate base of the Extra Large Load customer class *and High Voltage classes*, and reassign them as revenue requirements properly allocated to other customer classes that actually use the assets.

(See REACT Ex. 3.0C at 26:624-629 (emphasis added).) Significantly, neither ComEd nor any other party attempted to distinguish its treatment of the Extra Large Load and over-10 MW High Voltage customer classes in this regard; no party presented evidence that a study would simultaneously be appropriate for the Extra Large Load customer class and inappropriate for the over-10 MW High Voltage customer class. (See, e.g., ComEd Reply Brief at 120-123 (opposing study generally, but not discussing applicability to over-10 MW High Voltage customers specifically or contradicting REACT witness Mr. Terhune's Rider NS testimony); ComEd Initial Brief at 116-118 (same).)

REACT's position has been consistent throughout the proceeding: ComEd has improperly allocated assets to both the Extra Large Load class and the over-10 MW High Voltage customer classes. REACT expert witness Mr. Terhune explained that the same attributes that apply to Extra Large Load customers apply equally to the over-10 MW High

Voltage customers. (See REACT Ex. 6.0C 23:515-25:559; REACT Ex. 3.0C at 25:607-613.) Both customer classes are served in the same manner under Rider NS, and Mr. Terhune described the same Rider NS issues in his pre-filed testimony with regard to both classes. (See *id.*) In fact, Mr. Terhune's uncontested testimony explained that a study of distribution system assets serving all of the over-10 MW classes of customers would promote compliance with the Act's mandate for delivery services cost allocation and the Commission's *Rate Design Investigation* Order directive that ComEd analyze "which customer groups are served by which system service components". (See ICC Docket No. 08-0532, Final Order dated April 21, 2010 at 40; REACT Ex. 3.0C at 26:619-629; *see also* the discussion *supra* at 5-6, Section VII.C.1.(b)(ii).)

The same concepts are at work for the over-10 MW High Voltage customer class as for the Extra Large Load customer class. In essence, ComEd overcharges both the Extra Large Load and High Voltage customers by -- as the Proposed Order recognizes -- making an arithmetic or "double counting" error. The way ComEd currently treats Rider NS build outs is to remove those facilities from the overall revenue requirement, rather than the revenue requirement of the customer class for whose benefit the Rider NS build-out was made. (See REACT Ex. 6.3, ComEd Response to REACT Data Request 6.33 ("any compensation received under the terms of Rider NS is an offset to **ComEd's** revenue requirement" (emphasis added)).) In other words, ComEd's current practice eliminates the costs of the Rider NS facilities from the total revenue requirement, and then allocates those "savings" among classes as if all of each of the customer class's CP or NCP demand came from non-Rider NS facilities. The result is that for all of the over-10 MW customer classes, who Mr. Terhune explained use a large amount of Rider NS facilities, the benefit of their direct Rider NS payments are diffused over ComEd's entire system,

rather than concentrated within the class that paid for the Rider NS assets. (*See, e.g.*, REACT Ex. 6.0C at 19:420-424.)

Implicit in the Proposed Order is a finding that Mr. Terhune's uncontested testimony is credible, and that ComEd's assertions in opposition are ill-founded. (*See, e.g.* Proposed Order at 178, 181-182.) The Proposed Order itself cites Mr. Terhune's discussion of Standard Service, which contains discussions of the High Voltage customer class. (*See* Proposed Order at 179.) Mr. Terhune included a discussion of Standard Service for High Voltage customers, similar to his discussion for the Extra Large Load customer class. (*See, e.g.*, REACT Ex. 6.0C at 18:395-401, 19:420-423, 19:431-435.) He concluded:

As is clear from this summary, ***the over-10 MW High Voltage class and the Extra Large Load class*** simply do not, as a general matter, use a significant amount of certain assets (such as 12 kV single- and two-phase and 4 kV primary distribution lines) as part of Standard Service.

(REACT Ex. 6.0C at 19:420-423) (emphasis added).) In fact, Mr. Terhune opined that Standard Service for the High Voltage class included even *fewer* of these assets, because class members' primary service point(s) avoid the primary distribution system entirely. (*See* 3.0C at 13:314-322.) In other words, there should be even more assets that are excluded or charged in a *de minimis* manner to the over-10 MW High Voltage class because Standard Service is more restrictive for that class. (*See id.*)

The Proposed Order credited Mr. Terhune's pre-filed testimony discussion of the Standard Service and Required Service discussion by crediting his analysis. (*See* Proposed Order at 178 (discussing Standard Service and Rider NS), 181-182 (Analysis and Conclusions section).) In fact, the only serious opposition (from testimony) to Mr. Terhune's proposal for a study of distribution system assets for over-10 MW customers (including High Voltage) was

from ComEd witness Mr. Alongi, whose approach the Proposed Order criticized and rejected. (*See, e.g.*, Proposed Order at 181-82.)

REACT respectfully requests that the Commission compel ComEd to determine the actual distribution system assets used to provide Standard Service to **all** of the over-10 MW customer classes. (*See* Proposed Order at 181-182.)

**k. Customer Care Cost Allocation**

The Proposed Order acknowledges, and all of the parties agree, that the issue before the Commission is how to accurately allocate ComEd's Customer Care Costs between ComEd's delivery and supply functions "in order to determine what portion of these customer care costs are **properly allocated to delivery service.**" (Proposed Order at 190 (emphasis added); REACT Initial Brief at 46 (citing to party testimony and the transcript).) No party has advocated anything less than full recovery of ComEd's prudently incurred Customer Care Costs, whether as part of the delivery or supply function. (*See* REACT Initial Brief at 46 n.8.) Accurate allocation of these costs is exactly consistent with the Act's mandate that "Charges for delivery services shall be cost based" and shall be tied to "services associated with such costs." (220 ILCS 5/16-108(c), cited at Proposed Order at 10.)

As explained in REACT's Initial Brief, in order to accurately allocate the Customer Care Costs, the Commission should analyze three separate issues:

**First**, the Commission should determine which Customer Care Costs should be allocated. REACT and Staff agree that it should be all Customer Care Costs, while ComEd sticks to the same position criticized by the Commission in the Special Investigation Proceeding, only examining direct operations and maintenance ("O&M") costs, while excluding indirect O&M as well as capital costs. (*See* REACT Initial Brief at 48, 54-56.) The Proposed Order appropriately concludes that the total costs should be analyzed. (*See* Proposed Order at 199) ("The impact that

including the total costs here would have, at a minimum, would be to reflect reality, instead of some artificial group of costs that ComEd arbitrarily chose. Additionally, ComEd's decision in this regard ignores the mandate set forth by this Commission in the *Rate Design Investigation Order*.”)

**Second**, the Commission should chose as its basic allocation approach the “Allocation Study” (an approach based on embedded cost of service principles) instead of the “Switching Study” (an approach based on an avoided cost of service methodology). Although the Commission previously has been skeptical of avoided cost studies and has expressed its desire to see an embedded cost study fully supported by the evidentiary record regarding Customer Care Costs, the Proposed Order nevertheless suggests that the Commission should rely upon ComEd's flawed avoided cost Switching Study. (*See Proposed Order at 196.*)

**Finally**, the Commission should apply allocators that accurately and fairly reflect cost causation. Assuming that the Commission agrees with REACT and Staff that all Customer Care Costs should be allocated, the allocators should be appropriate for **all such costs**, including capital costs, indirect O&M costs, as well as direct O&M costs. The Proposed Order agrees that all costs should be allocated somehow, based upon figures that ComEd would provide in response to a post-record data request that would be based upon REACT expert witness Mr. Merola's analysis. (*See Proposed Order at 199 (noting that proper analysis of total costs is the proper subject of a post record Data Request).*)

REACT respectfully submits that the Proposed Order should be modified to reject ComEd's flawed avoided cost Switching Study approach, and instead endorse the embedded cost Allocation Study approach, applying appropriate allocators based upon the evidence already in the record.

***Description Of The Avoided Cost Switching Study Approach  
And The Embedded Cost Allocation Study Approach***

In response to the Commission's directive in the *Rate Design Investigation* Order, ComEd presented two studies evaluating the functionalization of its Customer Care Costs: an avoided cost Switching Study and an embedded cost Allocation Study.

ComEd's avoided cost Switching Study improperly examined only direct O&M costs that ComEd attributed to the supply function with 1% switching, and then tried to predict what those costs might be one day in the future based upon potential 10% and 100% customer switching levels. ComEd performed the Switching Study as a "means of determining whether the costs are inherently related to distribution service or something else, like supply service". (ComEd Ex. 24.0 at 7:137-138.) The Switching Study purports to allocate current costs based on ComEd's guess about what costs will be avoided under future customer switching scenarios, rather than whether the costs are caused by supply or delivery functions today. (See REACT Ex. 2.0 at 15:324-16:339, 17:356-364; REACT Ex. 5.0 at 11:204-215; *see also* ComEd Ex. 19.0R at 7:164-8:171.) Thus, the entire Switching Study was ComEd's test to see whether direct O&M costs somehow would be avoided under future switching scenarios; the purpose was not to allocate existing costs.

The embedded cost Allocation Study approach, as presented by ComEd and modified by REACT, is much more straight-forward. Consistent with the embedded cost of service study approach that is at the core of ComEd's proposed increase in rates (as well as IIEC's proposed ECOSS that is endorsed by the Proposed Order), a historic test year snapshot of Customer Care Costs is taken, looking at **all** such costs (including direct and indirect O&M costs, as well as capital costs and depreciation), and allocators are used to appropriately apportion those costs between the delivery and supply functions. (See REACT Initial Brief at 50.) With great

attention to detail, relying upon the Allocation Study presented by ComEd as well as additional information provided by ComEd and his decades of industry experience, Mr. Merola developed and applied allocators to these historic costs. (See REACT Ex. 2.0 at 25:525-26:558, 31:657-662; REACT Ex. 5.0 at 64-68.)

***Allocation Of Costs Based Upon ComEd's Switching Study  
Is Incompatible With Allocating ComEd's Total Customer Care Costs***

The Proposed Order reaches two conclusions that are simply incompatible with one another. First, the Proposed Order correctly concludes that ComEd should include the total costs associated with Customer Care when allocating Customer Care Costs. (See Proposed Order at 199.) However, the Proposed Order then separately concludes “that ComEd analyzed the correct pool of costs in the ‘Switching Study’” and suggests that the Switching Study is the proper allocation method to use to allocated ComEd’s Customer Care Costs. (Proposed Order at 196.) These two separate conclusions are simply incompatible.

It is impossible that ComEd analyzed “the correct pool of costs” in its Switching Study because, as the Proposed Order properly concluded, the correct pool of cost should include *all* Customer Care Costs and ComEd’s Switching Study only analyzed direct O&M costs. That is, the entire Switching Study began by asking the wrong question. ComEd asked what percentage of direct O&M costs (not the total cost to serve) should be allocated to the delivery and supply function. (See REACT Ex. 2.0 at 18:396-19:402.) There would be significant differences between how costs would be allocated as they relate to direct O&M, as compared to indirect O&M and capital costs. (See *id.*). As a result, the Switching Study simply cannot be used to properly allocate the total Customer Care Costs.

### ***The Avoided Cost Switching Study Approach Relies Upon Speculation***

ComEd's Switching Study is highly speculative and necessarily depends on customer switching scenarios that neither exist today nor are likely to exist by any reasonably predictable future date. (*See* REACT Ex. 5.0 at 12:228-230.) Contrary to the suggestion in the Proposed Order, this is not just REACT's position. The witnesses for both ComEd and Staff who addressed Customer Care Costs admitted that the 10% and 100% switching scenarios are speculative: Staff witness Mr. Rukosuev stated that the 10% and 100% are "speculative future scenario[s]" and ComEd witness Mr. Donovan made a similar concession. (Tr. 1190:14-17 (Staff witness Mr. Rukosuev); Tr. 1312:10-1314:8 (ComEd witness Mr. Donovan).)

The Proposed Order acknowledges the speculative nature of the future switching scenarios in the Switching Study, but suggests that since the 1% switching scenario has some historic basis, the entire Switching Study is valid. (*See* Proposed Order at 196.) However, as REACT witness Mr. Merola explained, one cannot simply use the 1% scenario allocation and disregard the 10% and 100% scenarios, as all three scenarios are required to arrive at a final result. (*See* REACT Ex. 5.0 at 11:207-12:234.)

In addition to relying on unrealistic hypothetical scenarios, the end result of the Switching Study -- allocating more than 99% of costs to the delivery function -- is implausible and is further evidence that the Switching Study is flawed. The Proposed Order incorrectly states that "[no] party has presented evidence indicating that these projections are scientifically invalid". (*See* Proposed Order at 196). REACT repeatedly has questioned the validity of ComEd's conclusion based on its both the methodology of the switching scenarios and, in addition, the nearly zero Customer Care Costs are associated with its supply function as a result of the study. (*See, e.g.,* REACT Ex. 5.0 at 17:353-355.) Indeed, the Commission previously

found this result hard to believe, stating: “If the Commission’s goal is to assign costs to the cost causers, it is difficult to imagine that less than 1% of ComEd’s Customer Care Costs are caused by supply related matters.” (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67). The Commission was commenting on the results of a Switching Study that used the exact same methodology as the Switching Study ComEd presented in this proceeding. Indeed, it was these questionable results of ComEd’s prior Switching Study that spurred the Commission to require ComEd to present an embedded cost study, in order to allow the Commission to compare the results of the two different methodologies. (See ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68.)

While suggesting that the Commission rely upon ComEd’s avoided cost Switching Study, the Proposed Order also notes that Customer Care Cost allocation may have to be revisited as customer service changes, the information technology infrastructure changes, and the competitive market continues “blossom[ing].” (Proposed Order at 196.) Acknowledging that the cost causation structure could undergo significant changes in ways that are not predicted by ComEd’s Switching Study undermines the suggestion that ComEd’s avoided cost Switching Study methodology is appropriate by acknowledging the speculative nature of the future switching scenarios. (See REACT Initial Brief at 53; REACT Reply Brief at 20-21.)

***The Embedded Cost Allocation Study Approach Avoids Speculation,  
Better Complies With The Act, And Achieves The Policy Goals  
Expressed In Prior Commission Orders And The Proposed Order Itself***

For precisely the reasons that the Proposed Order acknowledges -- the limited scope and speculative nature of the Switching Study, the need for ongoing review, and the desire to match costs with the rates charged to the costs’ causers -- the Allocation Study is a superior choice; the

Allocation Study better reflects the present reality of cost causation. (*See* REACT Initial Brief at 50.)

To properly address the Proposed Order's well-founded concerns that cost causation could change over time, an Allocation Study methodology should be used both in the instant proceeding and in future rate cases, to acknowledge the known and actual cost causation at the time of each rate case. Likewise, the fact that ComEd must "stand 'ready willing and able'" to be the default provider is by definition factored into a proper embedded cost study in the form of designing proper allocators. (*See* Proposed Order at 196; REACT Ex. 5.0 at 13:252-264 .) The Allocation Study takes as its base what the Proposed Order acknowledged was the most reliable part of the Switching Study -- a scenario grounded in the 2009 test year -- but does not add extraneous and admittedly speculative 10% and 100% scenarios to arrive at an allocation approach. Furthermore, the Allocation Study would undoubtedly be adjusted in future ComEd rate cases, to the extent that ComEd could establish that its operational realities had changed since the last Rate Case. The forms this could take include: understanding of its default provider obligations, increased switching, changes resulting from use of PORCB, or any other reason.

The Allocation Study will better accomplish the goals set out in the Proposed Order -- as well as those in the Act and the Commission's prior Orders. As discussed in REACT's Initial Brief and Reply Brief, only the Allocation Study is consistent with the Act and the Commission's prior Orders. (*See* REACT Initial Brief at 47-50; REACT Reply Brief at 22-23.)

The Act limits delivery services to:

those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function **so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility . . .**

(220 ILCS 5/16-102 (emphasis added); *see also* REACT Initial Brief at 8-9 (analyzing the Act's language).) The Act does not contemplate that "delivery" costs would include costs incurred to provide supply, whether or not those costs can be avoided in the future.

Furthermore, as described above, the Commission has expressed great skepticism about ComEd's avoided cost Switch Study approach, and finally ordered ComEd to undertake -- consistent with its other allocations -- an embedded cost study. (*See* REACT Initial Brief at 14-16 (quoting the Commission's Final Orders in ICC Docket Nos. 07-0566 and 08-0532).) In particular, the Commission found that:

REACT, however, points to functions that clearly support supply, yet no costs are allocated to supply for these functions in ComEd's [analysis] . . . . REACT informs us that it was unable to get this information from ComEd. Similarly, REACT raises a valid argument that some portions of the calls received by the Customer Call Center should be allocated to supply.

(ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 68; *see also* REACT Initial Brief at 50 (analyzing the Commission's Order).) Until the present case, ComEd has not provided embedded cost information sufficient to design an embedded cost Allocation Study that the Commission could use to test the reasonableness of the implausible results of the avoided cost Switching Study methodology. Now that ComEd has presented an embedded study and additional embedded cost information in discovery, ComEd and REACT are less than three percentage points apart in their respective proposed embedded cost studies. (*See, e.g.*, REACT Reply Brief at 25 (comparing REACT Ex. 2.5C with ComEd Ex. 19.0R at 2:25-26).)

Consistent with the goals articulated in the Act, in prior Commission Orders and within the Proposed Order itself, REACT respectfully requests that the Commission adopt the Allocation Study.

**(i) Allocation Study vs. Switching Study**

The Proposed Order addressed this issue in Section VII.C.1.k, rather than VII.C.1.k(i).

### (iii) Adjustment of Allocation Study Allocators

If the Commission adopts Allocation Study rather than the Switching Study, this section will no longer be moot. (*See* Proposed Order at 199.) For the reasons detailed in its Initial Brief and Reply Brief, REACT urges the Commission to use the allocator adjustments suggested by Mr. Merola. (*See* REACT Initial Brief at 56-59; REACT Reply Brief at 25-27.) In summary, Mr. Merola suggests:

- Fixing illogical and unsupported inconsistencies between allocators such as ComEd's different allocation factors sending out bills and opening mail (*See* REACT Initial Brief at 58); and
- Where ComEd's allocator used an irrelevant factor, such counting line items rather than calculating underlying costs that ComEd incurs for generating charges for the System Billing Allocator, replacing ComEd's allocator with a more reasonable assumption based on Mr. Merola's extensive experience and the limited information ComEd provided in discovery. (*See id.*)

Mr. Merola's adjustments to ComEd's allocators are well-considered and supported by the evidence. For example, regarding the Bill Calculation Allocator, Mr. Merola explained:

Because ComEd did not adequately support its own allocator, I developed an alternative allocator. In my experience, including seven years of direct experience in software design, development and implementation; the costs of computing a bill are related in large part to the software systems, computer hardware, business processes, infrastructure, and personnel that are involved in bill computation. These costs support both the delivery function and the supply function. In the absence of complete alternative data from ComEd that shows that the allocation of costs should be weighted more heavily to the delivery function or more heavily to the supply function, the most reasonable approach -- i.e. the most reasonable default assumption -- was to allocate the indisputably common costs evenly between the two functions.

(REACT Ex. 5.0 at 20:408-418.) This is precisely the type of analysis, based on a strong evidentiary foundation, that allows the Commission to compare allocations and determine which are the most reflective of actual cost causation.

Although the underlying rationale for the allocators is important, it is significant to note that REACT's allocation factors result in an allocation of **20.9%** to supply, which is less than

three percentage points higher than the percentage allocated to supply using ComEd's allocators in its Allocation Study. (*See* REACT Reply Brief at 25.)

To summarize, the Commission has expressed concern about ComEd's failure to accurately allocate Customer Care Costs and has expressed skepticism about ComEd's "Switching Study" approach and the results of that approach. ComEd's approach in this proceeding is essentially to continue the *status quo*, leading to an allocation result that the Commission has previously found "difficult to imagine." (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67.) In contrast, REACT has presented detailed, credible expert analysis about the amount of Customer Care Costs at issue, the proper "Allocation Study" approach to adopt, and the adjustments to that are necessary to reach a fair and equitable allocation of Customer Care Costs based on current information. Accordingly, REACT respectfully request that the Commission direct ComEd to adopt the Allocation Study, as modified by REACT witness Mr. Merola, and to apply that study to all Customer Care Costs identified by Mr. Merola, rather than the artificially low amount of Customer Care Costs identified by ComEd.

## **VII.**

### **RATE DESIGN**

#### **C. Potentially Contested Issues**

##### **2. Non-Residential**

##### **(a) Movement Toward ECOSS Rates**

##### **(i) Extra Large Load and High Voltage Customer Classes**

REACT appreciates the thoughtful analysis the Proposed Order devoted to its discussion of the flaws in ComEd's proposed ECOSS's allocations, and its mandate that ComEd undertake a study of the distribution system assets serving ComEd's largest customers. (*See* Proposed Order at 177-78; 181-182, 249.) However, without regard to improvements in IIEC's ECOSS

over previous ECOSSES considered in ComEd Rate Cases in other areas, it does not appear that the issues for over-10 MW customer classes regarding Rider NS build-outs and facilities constructed for ComEd's convenience are addressed. (*See, e.g.*, REACT Ex. 6.0C at 38:879-40:934; *see also* Proposed Order at 162-163 (not requiring functionalization of single-/two-phase lines), 181-182 (saving study for next Rate Case initial filing).) Thus, any increase above system average would result in ComEd's largest customers overpaying for those facilities, at least until the conclusion of ComEd next Rate Case. To the extent that, under the IIEC proposal adopted by the Proposed Order (or such approach as is adopted by the Commission) would increase rates for any over-10 MW customer classes above the system average, the Commission should restrict those increases to the system average to account for the overpayment the Proposed Order identifies for 4 kV and single-/two-phase assets.

### **3. Collection of Illinois Electricity Distribution Tax**

REACT respectfully requests that the Commission follow the arguments presented in REACT's Initial and Reply Briefs, as well as IIEC's briefing. (*See* REACT Initial Brief at 44-46; REACT Reply Brief at 18-19; IIEC Initial Brief at 53-57, 71-72; IIEC Reply Brief at 29-32, 43-45.)

### **4. Distribution Loss Factors**

The Commission can best achieve the Proposed Order by ordering ComEd to file yearly updates to its Distribution Loss Study. The Proposed Order provided a clear statement that the best forum for resolving DLFs is through contested litigation. (*See* Proposed Order at 270.) Both ComEd and Staff conceded that DLFs would benefit from additional oversight. (*See* REACT Reply Brief at 36.) To accomplish the goal of sharpening DLFs through litigation but still providing the additional oversight that parties acknowledge would be helpful, REACT respectfully requests that ComEd be compelled to file its Distribution Loss Factors every year

with the Commission. The additional review opportunities should diminish the intensity of the litigation in any given year, because the Distribution Loss Study will be less likely to fluctuate as wildly as it has over the past several Rate Cases. (*See id.*; REACT Initial Brief at 71-72.) This includes instances such as the 2007 Rate Case, where ComEd apparently updated its methodology, leading to an unplanned but massive increase in proposed DLFs. (*See Proposed Order at 270.*)

## **XI.**

### **OTHER ISSUES**

#### **F. Other**

The Proposed Order on numerous occasions appropriately speaks of holding ComEd accountable for its failure to comply with the *Rate Design Investigation* Order (ICC Docket No. 08-0532). (*See, e.g., Proposed Order at 75, 157, 166-167.*) However, the Commission has deferred taking actions to discipline ComEd for failure to comply with those clear Commission directives. Similar to the *Rate Design Investigation* Order, the Proposed Order requires ComEd to submit certain documentation and studies with its initial filing in its next rate case (including, for example, the study of distribution system assets serving ComEd's largest customers). (*See Proposed Order at 181-182.*) While REACT understands that the Commission has ruled on its Verified Motion to Dismiss the Instant Proceeding, its related Verified Petition for Interlocutory Review, and its Verified Application for Rehearing, REACT respectfully reiterates that it believes that the instant proceeding should be dismissed -- for the reasons set forth in its prior pleadings, as well as for the reasons set forth in the Proposed Order.

In the alternative, at a minimum, in order to both “put teeth” into the Proposed Order's strong statements and to create expectations among the parties, REACT respectfully requests that the Commission enter an Order setting forth the penalties associated with any future delay or

non-compliance. Those penalties should include immediate dismissal of any proceeding in which ComEd proposes a rate increase, but fails to abide by the Commission's directives. Clear expectations -- backed up with clear discipline -- will help avoid a repeat of ComEd "[f]iling essential evidence that was required to be initially, weeks afterward, plac[ing] all entities in a bind regarding time." (Proposed Order at 75.) REACT recognizes that the Proposed Order does in certain specific sections or regarding specific mandates refer to penalties under the Act; REACT respectfully suggests that the Order make clear that **all** of its mandates are similarly subject to these penalties. (*See, e.g.*, Proposed Order at 34-35, 169, 178.)

## **XI. CONCLUSION**

REACT urges the Commission build on the strong foundation set out by the Proposed Order. REACT notes that the changes it suggests are entirely consistent with the goals stated in the Proposed Order, and will require very little additional Commission action. To that end, REACT respectfully requests that the Commission either dismiss the instant proceeding or modify the Proposed Order, and enter an Order that:

- Directs that the study of distribution system assets include all over-10 MW non-Railroad class customers (to explicitly include High Voltage, over-10 MW customers);
- Restricts the rate increases for over-10 MW customers to the system average until ComEd performs the required study, to the extent the eventual rates exceed system average;
- Adopts the Allocation Study, with the allocators developed by REACT witness Jeffrey Merola, for the purpose of allocating Customer Care Costs;
- Maintains the *status quo* for the method of collecting IEDT;
- Compels ComEd to file an updated Distribution Loss Study annually;
- Includes the other proposed non-substantive changes suggested by REACT; and
- Grants such other relief as the Commission determines to be necessary.

Respectfully submitted,

**THE COALITION TO REQUEST EQUITABLE  
ALLOCATION OF COSTS TOGETHER**

By: /s/ Christopher J. Townsend  
One Of Its Attorneys

Christopher J. Townsend  
Christopher N. Skey  
Michael R. Strong  
DLA Piper LLP (US)  
203 N. LaSalle Street, Suite 1900  
Chicago, IL 60601  
christopher.townsend@dlapiper.com  
christopher.skey@dlapiper.com  
michael.strong@dlapiper.com